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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/534,949	05/16/2005	George Mauro	NATAPE P16BUSP2	1714
20210 7590 11/17/2009 DAVIS & BUJOLD, P.L.L.C. 112 PLEASANT STREET CONCORD, NH 03301				
EXAMINER				
ALIE, GHASSEM				
ART UNIT		PAPER NUMBER		
3724				
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11/17/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/534,949

Applicant(s)

MAURO, GEORGE

Examiner

GHASSEM ALIE

Art Unit

3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 July 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 23, 28, 29, 34 and 37-46 is/are pending in the application.
- 4a) Of the above claim(s) 37-46 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 23, 28, 29 and 34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 May 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 07/20/09 has been entered, wherein claims 23, 29 have been amended and new claims 37-46 have been added.

Election/Restrictions

2. Newly submitted claims 37-46 are directed to an invention that is independent or distinct from the invention that has been elected following reasons: for example elected claim 34, in Subgroup V as elected in a reply filed on 12/18/08 in response to a restriction requirement filed mailed on 11/20/08, and new claims 37-46 are related as subcombinations disclosed as usable together in a single combination.

- I. Claim 34, drawn to a fruit coring device including opposite first and second blades being formed in a cut formed in a sidewall of a tubular member and bent into an interior of a cavity halfway toward the longitudinal axis; and a substantially radially inwardly facing free end of the first and second blades spaced from the longitudinal axis.
- II. Claims 37-46, drawn to a cylindrical extraction or fruit coring device including a depth limiting feature being supported adjacent the handle and spaced from a circular cutting edge for limiting a penetrating depth of the coring device into a

desired fruit; and a cylindrical opening formed in the desired fruit having a substantially planar bottom.

The inventions are distinct, each from the other because of the following reasons:

3. Inventions I and II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable. In the instant case, e.g., subcombination I has a separate utility such as it could be used without the above-mentioned feature, as set forth in invention II. Conversely, subcombination II has a separate utility such as it could be used without the above-mentioned feature, as forth in invention I. See MPEP § 806.05(d).

It should be noted that the search for each individual invention may overlap but they do not coincide identically throughout. Therefore, the search for the elected invention may not be sufficient for the other non-elected inventions. Therefore, each individual invention includes a different field of search. In addition, the text and subclass search that might be needed to look for a particular feature in one invention is not sufficient for finding another particular feature in other invention due to their divergent subject matter. In other words, each individual invention with at least a distinct feature has a separate status in the art and requires a different field of search.

Since applicant has received an action on the merits for the claims that have been elected; accordingly, claims 37-46 are withdrawn from consideration as being directed to an invention that has not been elected and examined. *See 37 CFR 1.142(b) and MPEP § 821.03.*

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 23, 28, 29 and 34 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Regarding claim 23, “an opposite end of the at least one blade extends about half way toward the longitudinal axis” is not disclosed in the specification. Similarly, in claim 29, “an opposite end of the first and second blades extends about half way toward the longitudinal axis” is not disclosed in the specification. It should be noted that the drawings, elected drawings Figs. 22A-22C, does not show clearly show that the blades are extended about half way toward the longitudinal axis. It is hard to positively conclude that the blades extend about the half way toward the longitudinal axis. In addition, the specification does not disclose that the blades are extended about half way toward the longitudinal axis.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 23, 28, 29 and 34, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over McClean in view of Rink (3,127,939) or James (6,904,686) or Rosenbloom (Des. 130,116). Regarding claims 23, and 29, McClean teaches a fruit coring device including a handle, a tubular member having first and second ends defining a longitudinal axis extending longitudinally through a center of the tubular member, the tubular member having an interior cavity, the handle being connected adjacent the first end of the tubular member and the second end defining a substantially circular and planar cutting edge. It should be noted that the top portion of the tubular portion that is laterally extending towards the longitudinal axis of the tubular member is considered to be a handle. McClean also teaches at least one blade having a planar cutting edge, and at least one blade being supported within the interior of the cavity of the tubular member, by an inwardly facing surface of the tubular member such that an opposite end of the at least one blade extends toward the longitudinal axis but remains unsupported within the interior cavity, and the planar blade cutting edge lies substantially in a plane defined by the substantially circular and planar cutting edge. It should also be noted that McClean also teach that the blade extends about half way toward the longitudinal axis. See Figs. 1-4 in McClean. It appears that the blades are extended half way toward the longitudinal axis. In addition, it would have been an obvious matter of design choice to extend the blades half way toward the longitudinal axis, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955). Furthermore, James and Rosenbloom also teach that

the blade extends at least half way toward the longitudinal axis that pass through the center of the tubular member. It would have been obvious to a person of ordinary skill in the art to extend the blades of McClean's cutting apparatus, half way toward the longitudinal axis, as taught by James or Rosenbloom, in order to ensure that the blades cut further into the workpiece toward the longitudinal axis and facilitate cutting of the workpiece.

McClean does not specifically teach that the blade is only supported by the inwardly facing surface of the tubular member, and the blade is formed by a cut formed in a sidewall of the tubular member and the cut sidewall is bent inward into the interior cavity of the tubular member. However, it is well known in the art to form blades by bending part of a base inwardly such as taught by Rink, James, and Rosenbloom. Rink teaches a blade 14 which is only supported by the inwardly facing surface of a tubular member 11, and the blade is formed by a cut formed in a sidewall of the tubular member and the cut sidewall is bent inward into the interior cavity of the tubular member. See Figs. 1-4 in Rink. James also teaches a blade 40 which is only supported by the inwardly facing surface of a tubular member, and the blade is formed by a cut formed in a sidewall of the tubular member and the cut sidewall is bent inward into the interior cavity of the tubular member. See Figs. 1-3 in James. Rosenbloom also teaches blade that is only supported by the inwardly facing surface of a tubular member, and the blade is formed by a cut formed in a sidewall of the tubular member and the cut sidewall is bent inward into the interior cavity of the tubular member. See Figs. 1-3 in James. It should also be noted that the James and Rosenbloom also teach that the blade extends at least half way toward the longitudinal axis that pass through the center of the tubular member. It would have been obvious to a person of ordinary skill in the art to

form the blades of McClean's cutting apparatus, by cuts formed in a sidewall of the tubular member in a manner that the blades are only supported by the inwardly facing surface of the tubular member, as taught by, Rink, James, or Rosenbloom, in order to form the blades in an alternative way that reduces the manufacturing cost of the apparatus and produces the same result.

Regarding claims 28 and 34, McClean, as modified above, teaches everything noted above including a substantially radially inwardly facing free end of each of the first and second blades is spaced from longitudinal axis.

Response to Amendment

8. Applicant's argument with respect to claims 23, 28, 29 and 34 have been considered but they are not persuasive. Applicant's argument that the apparatus in Mclean has eight blade rather than two blades is not persuasive. The claims do not limit the blade to only two blades. Applicant's argument that the blades in Mclean are coupled or connected to both the outer ring --not just the tubular member-- is not persuasive. The claims do not call for the blades that are connected or coupled to only the tubular member. Claims simply call for the blades that are unsupported within the interior cavity of the tubular member. Claims do not specify how the blades are unsupported within the cavity. In this case, blades in Mclean are unsupported by having two sides not being connected to the tubular member or the handle.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Stern (Des. 287,452) and Pesce (2,675,580) teach a fruit coring device.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ghassem Alic whose telephone number is (571) 272-4501. The examiner can normally be reached on Mon-Fri 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer Ashley reached on (571) 272-4502. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, SEE <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ghassem Alic/
Primary Examiner, Art Unit 3724

November 9, 2009